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OCT 26 1981
ALEXANDER L. STEVAS
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No. 81-475

In The

Supreme Court of the United States

OCTOBER TERM, 1980

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

versus

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

REPLY MEMORANDUM IN SUPPORT OF CROSS-PETITION ON BEHALF OF THE EASTERN CONFERENCE OF TEAMSTERS

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1. In their Brief in Opposition to the Conference's Cross Petition for a Writ of Certiorari, Sine and Danner present a new issue for resolution by the Court, an issue that the Court cannot reach unless the Cross-Petition is granted. Sine and Danner's own Petition asks the Court to consider whether Maryland's thirty day statute of limitations is impermissibly short. Sine and Danner should not be allowed to supplement their petition by raising new questions after filing their original

petition unless they show good reason for failing to present the questions at the proper time. The orderly presentation to, and decision by, this Court of certiorari petitions would be disrupted if parties were free to supplement their petitions by amendments and additions raising new issues. The Court's rules and practice do not contemplate such a procedure (See Rules 21(1)(a), 22(1), (5) and (6) and 42) and we submit that it should not be countenanced unless very good cause is shown. *See Costello v. United States,* 365 U.S. 265, 284 (1961).

2. Sine and Danner recognize that to prevail against the Union, "there must be proof of *both* a breach of duty of fair representation *and* a breach of contract" (Brief in Opposition, p. 7)(emphasis in the original). Sine and Danner then ignore the simple fact that they cannot prove a breach of contract without setting aside the arbitration award. Their own attorney's failure to file a timely suit is responsible for this impossibility.

3. The District Court clearly rejected Sine and Danner's *res judicata* argument (Cross-Pet. App. C-4-5). The Court of Appeals did not consider the issue (Cross-Pet. App. B-12). Sine and Danner err, therefore, in asserting (Brief in Opposition, p. 9) that the Court of Appeals implicitly accepted their argument.

4. Sine and Danner also misinterpret the Conference's position with regard to the duty to exhaust internal union remedies. The Conference does not argue that the duty to exhaust would apply *if* the Conpany were still a party in the case, as it would be if the Court invalidates the Marland statute of limitations. The Teamster's internal union procedure can adequately redress a breach of the duty of fair representation in which the only remedy is attorney's fees. Neither *Miller v. Gateway Transportation Co., Inc.*, 516 F.2d 272, 275, n.4 (7th Cir. 1980) nor *Chambers v. Teamsters Local 639,* 578 F.2d 375, 387-388 (D.C. Cir. 1978) conclude that the Teamster pro-

cedure is unadequate to provide a monetary remedy where no employer is involved in the litigation. In any event, Sine and Danner did not argue below that the internal union procedure was inadequate and may not do so for the first time before this Court.

CONCLUSION

For the reasons stated herein and in the Conference's Cross-Petition, the Conference respectfully asks the Court to grant the Cross-Petition if the Petition is granted.

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